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RUEHKM/AMEMBASSY KAMPALA 1518
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TAGS: [PHUM](#) [KDEM](#) [PREL](#) [KE](#)
SUBJECT: KENYAN GOVERNMENT DROPS ONE CASE AGAINST
JOURNALISTS, KEEPS ANOTHER GOING

REF: 05 NAIROBI 4175

Classified By: Political Counselor Larry Andre for reasons
1.4 (b,d)

11. (C) Summary: An almost one-year old legal case against two journalists charged with publishing an "alarming" article has been quietly dropped by the government of Kenya (GOK). But the GOK is pursuing another legal case against other journalists under the same law, despite the risk of negative publicity associated with the related raid on the Standard newspaper. According to a journalist whose case was dropped, that action was part of a deal in which he in turn dropped his false arrest suit against the government. This case and the raid on the "Standard" in March 2006 were disturbing attacks on press freedom. End Summary.

12. (U) Without explanation, the Kenyan prosecutor announced on August 16 that he had been instructed by the Attorney General to withdraw the case against two journalists from the daily "Kenya Times," who were charged with publishing an "alarming" article. The withdrawal of the case was reported by Reuters and the local press.

Background

13. (U) In the midst of the heated constitutional debate preceding the November 2005 referendum, the Sunday September 25 edition of the Times, a paper owned by the opposition party KANU, had carried an article on the opinion/analysis page by staff writer David Ochami entitled "Coups in Africa do not occur out of nothing." The op-ed suggested that a coup in the country was possible, that a coup would not necessarily be an unwelcome development, and that "the political process is no remedy to Kenya's paralysis and backwardness." Two days later, undercover police arrested Ochami, and subsequently his editor Onyango Omollo as well. Charged with writing and publishing an "alarmist" story, the two were released on bail, after a day of detention and questioning. Ochami was not cowed: his next op-ed was entitled "Journalists should not capitulate to the state."

14. (U) Several months later, in March 2006, the Standard newspaper published a story alleging that a secret meeting had taken place between the President and LDP leader and presidential hopeful Kalonzo Musyoka. Soon after the story was published, there was an official police raid on the

Standard by hooded men who seized computers and theatrically burned copies of the paper on the sidewalk outside. The raid generated a firestorm of criticism, especially when it was reported that it involved the comically sinister Artur "brothers," supposed Armenian businessmen who had clear connections to the President's inner circle.

Ochami's Thoughts on His Case--and the Standard

¶5. (C) Kenya Times writer Ochami (protect) told poloff August 24 that he and Omollo had been charged under Section 66 of the penal code, which forbids the publishing of "alarming" articles, and under Section 33, which criminalizes the publishing of "rumors or false news." The dropping of the charges, he said, was part of a deal negotiated by lawyers after he and Omollo sued the government several months ago for false arrest. In return for the government's dropping its case against him, he dropped his lawsuit. He said similar cases have gone on for ten years, so his lawyer advised him to accept the deal. Ochami believes the government would have lost its case against him in the end, which would have made it easier to win his false arrest case, but he decided it was not worth a decade-long fight. Ochami said his case was highlighted by Amnesty International in a report this spring, as well as by "Reporters without Borders" and other media fora, and he believed the government felt that pressure. His notebooks, music cassettes, and correspondence that were seized when he was arrested have still not been returned.

¶6. (C) Ochami said the case against him was intrinsically weak because what he wrote was an opinion piece, whereas the penal code language is aimed at news stories. However, the Standard journalists are charged under the same sections of the code, he said. The government's case is stronger in that case because what the Standard published was a news story, alleging that the President had met with LDP member Kalonzo Musyoka. Ochami pointed out that the court case against the Standard journalists began the same day his case was dropped.

COMMENT

¶7. (SBU) Clearly, the government would have done better to simply ignore Ochami's hyperbolic original op-ed. Kenya's laws outlawing the publishing of "alarming articles" containing "rumors or false news" are holdovers from the bad old days, and acting on such laws was both politically clumsy and a strike at freedom of the press. That the government is continuing its case against the Standard journalists after the waterfall of negative publicity that followed the raid is troubling, and out of line with the significant improvements in press freedom since the end of the Moi era. END COMMENT.
RANNEBERGER